



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: General Chemical Services, Inc.

File: B-238191

Date: April 20, 1990

Anthony C. Schamel, for the protester.
David J. O'Connor, Environmental Protection Agency, for the agency.
Christina Sklarew, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where invitation for bids for removal and disposal of chemical products prohibited recycling and low bid included a proposal to return certain products to a manufacturer for blending and mixing into new products, bid was properly rejected as nonresponsive to the solicitation.

DECISION

General Chemical Services, Inc., protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. W9-90147-F7, issued by the Environmental Protection Agency (EPA) for the removal and final disposal of non-radioactive hazardous chemicals from a Superfund site in Olathe, Kansas.

We deny the protest.

The IFB required the contractor to remove chemical products from the premises and to provide for final disposal in compliance with EPA's "off-site policy."^{1/} The IFB

^{1/}The off-site policy is a directive issued by EPA which generally prescribes that hazardous waste removed from a Superfund site may only be sent to a disposal facility that does not release hazardous substances and operates in
(continued...)

048324/14181

required bidders to submit descriptive literature disclosing the location of the disposal facility that would be used. It further specified that mere acceptance of the hazardous substances at a properly permitted treatment, storage or disposal facility did not meet the definition of disposal under the proposed contract, and that EPA would have the right to refuse any method of treatment or disposal. The IFB further stated that "[it] is the contractor's responsibility to obtain all necessary documentation, including the completed manifest and certificate of destruction to prove that the disposal of all items has been accomplished."

Bidders were given an opportunity to ask contracting officials questions regarding the solicitation at a pre-bid conference, and a transcript of the conference was added to the IFB by Amendment 0001. The transcript includes a bidder's questions about what the certificate of destruction meant, and whether it required that all of the waste had to be incinerated or destroyed. The agency responded that "under this contract, we are not allowing this material to be recycled basically because we do not think there is anything of sufficient quantities that would justify doing that [and] everything has to be disposed of in a permanent type of situation."

General Chemical submitted the low bid. In its bid package, it included a proposal describing its work, experience and price. Its proposal also outlined the disposal facilities that would be used for each category of materials to be removed from the site. The proposal noted that "almost all of the materials in this project are new and unused products; most do not decompose or deteriorate on standing. Certain disposal will be accomplished by returning products to a manufacturer of that product who will blend and mix the chemicals into a new product."^{2/}

The agency concluded that this statement took exception to the requirement that the products be destroyed and not recycled. It rejected General Chemical's bid as nonresponsive, and this protest followed.

^{1/}(...continued)

accordance with all applicable laws. The off-site policy does not require that EPA contractors be allowed to recycle hazardous wastes removed from Superfund sites.

^{2/}General Chemical estimated in its bid that 49,000 pounds of useful chemicals were commercially valuable "for remanufacturing."

General Chemical contends that its bid was responsive to the solicitation requirements. The protester argues that the EPA's off-site policy in effect at the time of this solicitation established a preference for reuse or recycling instead of disposal by land burial. The protester also appears to be arguing that because the substances to be removed in this instance are not wastes but are new, unused chemicals, the proposed "blending and mixing into a new product" should be categorized as manufacturing rather than recycling.

To be responsive, a bid must represent an unequivocal offer to provide the exact thing called for in the IFB, such that acceptance of the bid will bind the contractor in accordance with the solicitation's material terms and conditions. Where a bidder provides information with its bid that reduces, limits or modifies a solicitation requirement, the bid may be rejected as nonresponsive. Oscar Vision Systems, Inc., B-232289, Nov. 7, 1988, 88-2 CPD ¶ 450.

First, as noted above, EPA's off-site policy does not require that each solicitation permit the successful contractor to recycle. In this connection, the agency reports that the On-Site-Coordinator (OSC), the agency official in charge of the removal action, decided before issuing the solicitation that recycling would not be appropriate in this case. Because the EPA would become the "generator" of the hazardous substances removed from the site, it would potentially be liable for any improper handling or storage of the materials during or after their removal from the site. In the OSC's opinion, this risk outweighed any value that might be realized from recycling, particularly in light of the relatively small gain that recycling allegedly represented, given the small volume of any one chemical that might be present. In addition, the agency was not willing to accept any additional delays or risks of mishandling that a recycling effort would tend to involve.

Second, we find that General Chemical's bid did not offer to dispose of the chemicals in accordance with the solicitation's material terms.^{3/} The IFB here explicitly

^{3/}To the extent the protester is arguing that recycling or reuse is preferable and that land burial does not really qualify as destruction, its argument pertains to the propriety of the IFB terms as written and may not be raised here. Our Bid Protest Regulations require that protests

(continued...)

prohibited recycling. In this regard, the question of recycling was discussed at the pre-bid conference, and we believe the agency's response, formalized in an amendment, made it clear that recycling would not be permitted. The record discloses, further, that a representative from General Chemical was present at the conference and did not raise any of the concerns it now raises when the issue of recycling was discussed. Regarding the argument that the bid did not in fact propose to recycle any materials, General Chemical has presented no basis to support this contention. The proposal stated that materials would be blended or mixed into a new product, which fits the common and ordinary meaning of the term "recycle." We therefore find that by proposing to recycle the chemicals, General Chemical took exception in its bid to the material terms of the IFB and that its rejection as nonresponsive was proper.

General Chemical also contends that the proposed award to the next-low bidder, Waste Management, Inc., was motivated by a fear that the contracting officer expressed of being sued by that firm. However, the protester presents no evidence beyond its bare allegation to support this portion of the protest, and has not alleged any specific defect in that firm's bid. We therefore have no basis to question the proposed award.

The protest is denied.



 James F. Hinchman
General Counsel

3/(...continued)

based upon alleged improprieties in a solicitation that are apparent prior to bid opening be filed prior to bid opening.
4 C.F.R. § 21.2(a)(1) (1989).